FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 640/2004
(Ramrao Mahipalsingh Devkule Vs. Sau. Tarabai Shamrao Chaple & 7 ors.)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. Bapat, Adv. for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 7th September, 2007.

Heard Shri Bapat for the appellant.

The appellant is the original defendant no. 8. A suit was filed by the plaintiff who was the relative of the defendant nos. 1 to 7 for perpetual injunction preventing the defendants from causing obstruction to the possession of plaintiff. It is the case of the plaintiff that there was no partition between the plaintiff and the defendant nos. 1 to 7 and the parties were cultivating the land as per their convenience. According to the plaintiff, she was in possession of the disputed land admeasuring 0.15 HR The defendants, however, decided to sell the land which was in her possession and deliver the possession thereof to the proposed vendee. It was further pleaded by the plaintiff that the defendant nos. 1 to 7 entered into an agreement of sale of Kh. No. 805/1 with the defendant no.8, without her

consent and the name of the defendant no.8/present appellant was entered into the possession column of 7/12 extract in respect of Kh. No. 805/1. She immediately, on noticing the same in the year 1998, issued the notice to the defendant nos. 1 to 7.

The defendants filed their written statements and denied the claim of the plaintiff. The defendant nos. 1 to 7 also filed counter claim for partition and separate possession of their share in the suit property. The defendant no. 8/present appellant also filed joint written statement along with three other defendants and by the amendment to the written statement filed by these four defendants, it was pleaded that the defendant no.8 was in adverse possession of the field property bearing Kh. No. 805/1, being in possession of the same for more than 30 years and the defendant nos. 1 to 7 had knowledge of the adverse possession of the defendant no.8 over the Kh. No. 805/1. The defendants sought for the dismissal of the suit filed by the plaintiff for permanent injunction and the defendant nos. 1 to 7 prayed for partition and separate possession of their shares in the suit property.

The trial Court, after considering the evidence tendered by the parties on record, held that the plaintiff failed to prove that she was in possession of the suit property. The Court further

held that the plaintiff failed to prove that the defendant nos. 1 to 7 had no right to sell the suit property. The Court then held that the defendant nos. 1 to 7 proved that the suit property shown in para 2 of the plaint was liable to be partitioned. The Court also held that the defendant no.8 proved that he was in factual possession of the suit property since last 30 years. The judgment passed by the trial Court on 28/3/2002 was challenged by the plaintiff in appeal. The appellate Court, however, reversed the findings recorded by the trial Court so far as they related to the possession of the defendant no.8/ present appellant for a period of 30 years prior to the institution of the suit.

The first appellate Court re-appreciated the material evidence on record and held that the plaintiff proved her exclusive possession over the suit field which the defendant no.8 claims to have possessed. The Court held that the plaintiff was entitled to claim relief of injunction against the defendant no.8, who had not perfected the title to the suit property by adverse possession. The appellate Court held that the plaintiff had produced sufficient evidence on record to show that in the year 1997-1998, at the relevant time, the defendant no.8 was not in possession of the suit field. The Court held that the evidence of the plaintiff and her witnesses clearly showed that the defendant no.8

was not in possession of the suit field. The first appellate Court considered the fact that there was no other documentary evidence on record except 7/12 extract for the year 1997/1008 produced by the defendant no.8 to show his possession over the field Survey No. 805/1 and the plaintiff had challenged the entry made in 7/12 extract for the year 1997-1998 and the appeal filed by her was pending before the Revenue authority. In view of the aforesaid facts and circumstances, the appellate Court, on re-appreciation of the material evidence on record, came to a conclusion that the plaintiff was in possession of the field Survey No. 805/1, during the relevant time and the defendants were liable to be permanently restrained from interfering with the peaceful possession of the plaintiffs over the field Survey No. 805/1. The appellate Court dismissed the counter claim of the defendant nos. 1 to 7, but permitted the defendant nos. 1 to 7 to file fresh suit for partition. It is not necessary, however, to consider the correctness of the findings recorded by the first appellate Court about the dismissal of the counter claim as the present appeal is filed by the defendant no.8 who claimed to be in possession of the suit field Survey No. 805/1 as the owner thereof by adverse possession.

I have perused the pleadings of the defendant no.8 in his written statement. The

pleadings do not disclose the necessary ingredients which are necessary for raising a plea of adverse possession.

In the facts and circumstances of the case, the plaintiff had proved that the defendant nos. 1 to 7 were intending to sell the property to the defendant no.8 and, therefore, some of the defendants, by joining hands with the defendant no. 8, had filed joint written statement along with the defendant no.8 to show that they were aware of the fact that the defendant no.8 was in adverse possession of the property.

The findings recorded by the first appellate Court are based on a proper appreciation of the material evidence on record. They do not give rise to any substantial question of law. Second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP